

# The strange resignation of a chief justice – Lord Trevethin

by Geoffrey Watson



Photo: Elliot & Fry

On the morning of Friday 3 May 1922, the lord chief justice of England, Lord Trevethin, was reading *The Times* while preparing himself for that day in court. One article – quite understandably – caught his eye: it was titled ‘Retirement of Lord Trevethin’. Much to Trevethin’s surprise, the journalist recounted: ‘The king has been pleased to accept the resignation of the Rt Hon Lord Trevethin from the office of lord chief justice of England’. Until he read the article, Trevethin had no idea that this had transpired. How did this happen?

## Who was Lord Trevethin?

Alfred Tristram Lawrence was born in 1843, and read law at Trinity College, Cambridge. He was called to the Middle Temple in 1869 and took silk in 1897. In 1904, he was appointed to the High Court, sitting in the King’s Bench Division where he was an affable, serviceable, and utterly unexceptional judge. Upon the resignation of Lord Reading, on 15 April 1921 Lawrence was appointed to the office of lord chief justice of England and Wales and elevated to the peerage, taking the rather ornate title of Baron Trevethin of Blaengawney. This appointment was a surprise appointment to many: although Lawrence was 77 years old, he was not the most senior of the puisne judges,<sup>1</sup> and had not been a standout performer.

But Trevethin’s appointment, as you will see, was not an appointment based on merit.

## The office of lord chief justice

Strangely, the office of lord chief justice of England and Wales is relatively new.<sup>2</sup> The office was only invented after the three ancient common law courts (King’s Bench, Common Pleas and Exchequer) were folded into High Court in 1875. And then it was only in 1880, once two of the presiding judges in those courts had died or retired, that a single chief justice was appointed – Sir Alexander Cockburn.

The office quickly became a political gift – six of the next seven chief justices after Cockburn had been politicians and had served as attorney-general. In fact, a practice developed under which it was accepted that if the position of chief justice became free, the attorney-general of the moment had a *right* to claim the office. This led to some poor appointments of unsuitable types and under-skilled lawyers.

This practice was well-entrenched by the time Rufus Isaacs KC<sup>3</sup> was appointed attorney-general in H H Asquith’s Liberal government.

Isaacs had taken silk in 1898 and was a genuine leader of the bar, rated as one of the leading advocates of his day, with a large and very lucrative practice. His parliamentary career was much less successful, and he and David Lloyd George had been very badly damaged from the fallout from the Marconi scandal – in which both were implicated in insider trading by purchasing shares in a company with which the government was about to do business.

So, when Lord Alverstone retired as chief justice in 1913, Isaacs claimed his entitlement. By this time Lloyd George had replaced Asquith, and the new prime minister immediately appointed his friend Isaacs – who was relabelled as Lord Reading.

It was quickly apparent that the new Lord Reading had little interest in the work of the court. In fact, he spent little of his time sitting as a judge, or even in the United Kingdom. He headed the Anglo-French war loan mission to America in 1915, stayed on as high commissioner, and he even took an appointment as ambassador to the USA from 1917 to 1919 – all while he was chief justice.

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In 1920, Lord Chelmsford's tenure as viceroy to India was drawing to an end. Reading made it known to Lloyd George that he wanted the Indian job, but he had a problem. Although he had made a lot of money at the bar, he had also spent a lot of that money (something which might resonate with readers of *Bar News*). Sir Edward Carson KC<sup>4</sup> happened to be present at a dinner when Reading explained all of this to Lloyd George. Carson recalled Reading as saying that 'he had lived expensively and had not made sufficient provision for the future' and explaining to Lloyd George that he could not leave for the viceroyalty (which carried no pension) as he had not served long enough to attract a judicial pension. Carson listened in horror as the two close friends then hatched a cunning plan. The viceroyalty was for a fixed five year term, and that old schemer Lloyd George blurted out an idea – he said to Reading he could appoint 'an elderly judge as stop-gap', while Reading was in India, and then 'Rufus can come back, resume the chief justiceship, and earn his pension'.

Now while that is not the way things worked out, it was the first step toward the Trevethin resignation.

### Things get complicated

On 2 April 1921, Reading was appointed the viceroy to India, thus opening the position of chief justice – but a complication arose when, in accordance with the accepted protocol, the attorney-general, Gordon Hewart KC, claimed the top job.

This placed Lloyd George in a difficult position in two different ways. One problem was the arrangement he had with Reading (not that breaking promises was ever a matter which troubled Lloyd George). Hewart was in his early 50s and would not easily be shifted when Reading returned. Lloyd George's other problem came from the fact that his Liberal government was struggling, and Hewart had been one of his most effective parliamentary

performers. So Lloyd George explained to Hewart that he could not afford to let him go, and then let Hewart know about the 'elderly judge' ruse. But Lloyd George then came up with a refinement: he would not rely merely upon the judge's age – in return for the stop-gap appointment, Lloyd George would acquire a signed and undated resignation from the new chief justice on the understanding that it could be deployed at any time.

Hewart agreed to forego his 'right' to the chief justiceship on those conditions.

The lord chancellor of the time was the Lord Birkenhead – not exactly a soft and compliant character.<sup>5</sup> When he was told of the plan, Birkenhead exploded. He wrote two swingeing letters to the prime minister, pointing out just how disgraceful this proposal was. Each point Birkenhead made was well-made. Birkenhead said that Lloyd George's scheme made the chief justice a 'creature of political exigency' and that, given the government was a regular litigant in the chief justice's court (commonly represented by the attorney-general), in any such proceedings the case would be heard and decided 'with the knowledge in the minds both of the judge and of the advocate that the latter could at any time displace the former from his seat and occupy it himself'.

Lloyd George, of course, ignored that, and just went ahead and did what he wanted.

### The selection and rejection of Lawrence

Birkenhead had predicted in one of his letters to Lloyd George that it would be difficult to find a suitable candidate willing to accept an appointment on such terms, and then went further to denigrate the abilities and capacity of each of the most senior judges, including disparaging the abilities of Lawrence.

It is not now known if or to whom Lloyd George offered the position apart from Lawrence; all we know is that Lawrence accepted the terms and took the appointment. On 15 April 1921, Lawrence was sworn in as the sixth chief justice and was rebadged as Lord Trevethin.

Trevethin did not last long in the job. By early 1922, it was clear that the Liberals were floundering and would lose the election due later that year. Hewart pressed for fulfilment of the promise and Lloyd George acceded.<sup>6</sup> It was in those circumstances that Lloyd George submitted Trevethin's resignation to King George V. Lloyd George did so without even taking the time or courtesy to tell Trevethin. Poor old Trevethin sidled off into retirement and obscurity.<sup>7</sup>

### The new chief justice

So what did all this intrigue produce? One can only hope it was worth the effort.

Well, no. On 8 March 1922 Baron Hewart of Bury was sworn in as the seventh chief justice.<sup>8</sup> He is, of course, the author of the famous aphorism insisting that justice must also be seen to be done<sup>9</sup> – a standard which Hewart constantly failed to meet.

Professor Richard Jackson described him as 'biased and incompetent' and said Hewart was 'the worst English judge within living memory'. C P Harvey QC claimed he lacked only one quality as a judge – 'that of being judicial'. Professor Robert Heuston said Hewart was 'perhaps the worst chief justice since the seventeenth century', but Lord Patrick Devlin said that Heuston was not being 'quite fair. When one considers the enormous improvement in judicial standards between the seventeenth and twentieth centuries, I should say that, comparatively speaking, he was the worst chief justice ever'.

Hewart was chief justice for 18 years; he retired in 1940.

### ENDNOTES

- 1 The most senior was Justice Darling, who although senior to Lawrence on the bench was two years younger. Stung by being overlooked, Darling joked that he had been bypassed because, at 75, he was regarded as too young for the job.
- 2 It is interesting to observe that the office of Chief Justice of New South Wales is substantially older – 77 years older.
- 3 Rufus Daniel Isaacs: b 1860; d 1935. Called to the Bar 1887; QC 1898; MP 1904-1913; solicitor-general 1910; attorney-general 1910-1913; lord chief justice of England 1913-1921; viceroy of India 1921-1926
- 4 Edward Henry Carson: b 1854; d 1935. Called to the Irish Bar 1877; QC 1889; MP 1892; solicitor-general of Ireland 1892; solicitor-general for England 1900; attorney-general 1915; lord of appeal in Ordinary 1921-1929. Carson was the outstanding advocate of his time, perhaps most famous for his cross-examination of Oscar Wilde in Wilde's criminal libel suit against the Marquis of Queensbury.
- 5 Frederick Edwin Smith: b 1872; d 1930. Called to the Bar 1899; MP 1906; KC 1908; solicitor-general 1915; attorney-general 1915-1919; lord chancellor 1919-1922. Smith was one of the leading barristers of his day, notorious for his acid tongue. He was a very effective conservative politician.
- 6 I suppose that Lloyd George could relieve himself of the burden of his concurrent promise to Reading – because, he could have plausibly said, he would be out of office at the time Reading returned from India.
- 7 At least his son, Geoffrey Lawrence, was able to recover the family dignity. Geoffrey became a distinguished judge, presiding at the Nuremberg trial, and eventually elevated to the House of Lords as Lord Oaksey.
- 8 Gordon Hewart: b 1870; d 1940. On paper Hewart had a stellar career in law and politics: called 1902; KC 1912; MP 1913-1922; solicitor-general 1916-1919; attorney-general 1919-1922; lord chief justice 1922-1940.
- 9 *R v Sussex Justices; ex p McCarthy* [1924] 1 KB 256.